

Maine Revised Statutes
Title 14: COURT PROCEDURE -- CIVIL
Chapter 713: MISCELLANEOUS PROVISIONS RELATING
TO FORECLOSURE OF REAL PROPERTY MORTGAGES

§6203-A. POWER OF SALE; PROCEDURE; NOTICE; FORM

1. Power of sale. Any holder of a mortgage on real estate that is granted by a corporation, partnership, including a limited partnership, limited liability company or trustee of a trust and that contains a power of sale, or a person authorized by the power of sale, or an attorney duly authorized by a writing under seal, or a person acting in the name of the holder of such mortgage or any such authorized person, may, upon breach of condition and without action, do all the acts authorized or required by the power; except that a sale under the power is not effectual to foreclose a mortgage unless, previous to the sale, notice has been published once in each of 3 successive weeks, the first publication to be not less than 21 days before the day of the sale in a newspaper of general circulation in the town where the land lies and which notice must prominently state the street address of the real estate encumbered by the mortgage deed, if any, and the book and page number of the mortgage, if any. This provision is implied in every power of sale mortgage in which it is not expressly set forth. For mortgage deeds executed on or after October 1, 1993, the power of sale may be used only if the mortgage deed states that it is given primarily for a business, commercial or agricultural purpose. A copy of the notice must, at least 21 days before the date of the sale under the power in the mortgage, be recorded in each registry of deeds in which the mortgage deed is or by law ought to be recorded and must be served on the mortgagor or its representative in interest, or may be sent by registered mail addressed to the mortgagor or the mortgagor's representative at the mortgagor's last known address, or to the person and to the address as may be agreed upon in the mortgage, at least 21 days before the date of the sale under the power in the mortgage. Any power of sale incorporated into a mortgage is not affected by the subsequent transfer of the mortgaged premises from the corporation, partnership, including a limited partnership, limited liability company or trustee of the trust to any other type of organization or to an individual or individuals. The power of sale may not be used to foreclose a mortgage deed granted by a trustee of a trust if at the time the mortgage deed is given the real estate is used exclusively for residential purposes, the real estate has 4 or fewer residential units and one of the units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust. If the mortgage deed contains a statement that at the time the mortgage deed is given the real estate encumbered by the mortgage deed is not used exclusively for residential purposes, that the real estate has more than 4 residential units or that none of the residential units is the principal residence of the owner of at least 1/2 of the beneficial interest in the trust, the statement conclusively establishes these facts and the mortgage deed may be foreclosed by the power of sale. The method of foreclosure of real estate mortgages provided by this section is specifically subject to the order of priorities set out in section 6205.

[2009, c. 476, Pt. B, §3 (NEW); 2009, c. 476, Pt. B, §9 (AFF) .]

2. Notice to tenants; effect on title. In addition to the notices provided pursuant to subsection 1, the mortgagee shall provide a copy of the notice to a residential tenant if the mortgagee knows or should know by exercise of due diligence that the property is occupied as a rental unit. Upon request from a mortgagee, the mortgagor or its representative in interest shall provide the name, address and other contact information for any residential tenant. Notice to a residential tenant may be served on the residential tenant by sheriff or may be sent by first class mail and registered mail at the residential tenant's last known address. A residential tenant may not be evicted unless a mortgagee institutes an action for forcible entry and detainer pursuant to section 6001 at least 21 days after a mortgagee has served the notice required by this subsection. This

subsection may not be construed to prohibit an action for forcible entry and detainer in accordance with section 6001 for a reason that is not related to a foreclosure sale. The failure to provide the notice required by this subsection does not affect the validity of the foreclosure sale.

[2009, c. 476, Pt. B, §3 (NEW); 2009, c. 476, Pt. B, §9 (AFF) .]

3. Form of foreclosure notice. The following form of foreclosure notice may be used and may be altered as circumstances require; but nothing herein may be construed to prevent the use of other forms.

FORM

Mortgagee's sale of real estate

By virtue of and in execution of the Power of Sale contained in a certain Mortgage Deed given by to dated and recorded in the County Registry of Deeds, Book, Page, of which Mortgage the undersigned is the present holder, (if by assignment, or in any fiduciary capacity give reference), for breach of the conditions of said Mortgage and for the purpose of foreclosing the same there will be sold at Public Sale at o'clock, M. on the day of 20....., at, all and singular the premises described in said Mortgages,, (in case of partial releases state exceptions).

To wit: "(Description exactly as in the Mortgage, including all reference to title, restrictions, encumbrances, etc., as made in the Mortgage)".

Terms of Sale: (State here the amount, if any, to be paid in cash by the purchaser at the time and place of the sale, and the time or times for payment of the balance or the whole as the case may be and any other terms or conditions relating to the sale).

Other terms to be announced at the sale.

Signed:
(Present holder of Mortgage)

..... 20.....

[2009, c. 476, Pt. B, §3 (NEW); 2009, c. 476, Pt. B, §9 (AFF) .]

4. Notice of sale. A notice of sale in subsection 3, published in accordance with this chapter or in accordance with the power in the mortgage together with such other or further notice, if any, as is required by the mortgage, is sufficient notice of the sale, and the premises are considered to have been sold, and the deed thereunder must convey the premises subject to and with the benefit of all restrictions, easements, improvements, outstanding tax titles, municipal or other public taxes, assessments, liens or claims in the nature of liens and existing encumbrances of record created prior to the mortgage, whether or not reference to such restrictions, easements, improvements, liens or encumbrances is made in the deed; but no purchaser at the sale is bound to complete the purchase if there are encumbrances, other than those named in the mortgage and included in the notice of the sale, that are not stated at the sale and included in the seller's contract with the purchase.

[2009, c. 476, Pt. B, §3 (NEW); 2009, c. 476, Pt. B, §9 (AFF) .]

5. Public sale. At a public sale pursuant to this section, a mortgagee may bid and may purchase any real estate sold at such sale, as long as the mortgagee is the highest bidder. If the real estate is sold for an amount in excess of the outstanding balance of the mortgage together with all interest and costs, said excess must be used to satisfy any other encumbrances on said property and after all said encumbrances are satisfied together with all interest and costs, any excess then remaining must be paid to the mortgagor. If the mortgagor

or any person holding an encumbrance cannot be found after a diligent search, the money must be paid into the Superior Court in the county where the land lies for the benefit of the mortgagor or the holder of any such encumbrance.

[2009, c. 476, Pt. B, §3 (NEW); 2009, c. 476, Pt. B, §9 (AFF) .]

SECTION HISTORY

1967, c. 396, (NEW). 1967, c. 424, §2 (NEW). 1967, c. 544, §37 (RP). 1971, c. 113, (AMD). 1987, c. 667, §14 (AMD). 1991, c. 134, §1 (AMD). 1991, c. 768, §§1,2 (AMD). 1993, c. 277, §§1,2 (AMD). 1993, c. 277, §5 (AFF). 1995, c. 106, §1 (AMD). 1995, c. 106, §1 (AMD). 2009, c. 402, §16 (AMD). 2009, c. 476, Pt. B, §9 (AFF). 2009, c. 476, Pt. B, §3 (RPR) .

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